

# MARIA'S FATE WITH THE JURY TO-MORROW.

## Prosecution's Fourth Expert Closes the Testimony.

### Only the Arguments by Opposing Counsel and Charge by the Court Remain to Be Heard.

#### Impression of a Critical Observer of the Events Throughout the Trial Is That the Jury Will Disagree.

By Julian Hawthorne.

When Dr. Fitch, expert for the prosecution, came upon the stand, in the Barberi case yesterday, he radiated an atmosphere of such translucent intellectual equity and ingenuousness that one might have supposed any ordinary cross-examination could have been dispensed. He came, moreover, recommended by an army of 30,000 insane persons, and more epileptics than he cared to specify. But all was of no avail. Mr. Hynes discovered in his testimony symptoms of mental fog that would have done credit to London in November, and even precipitated (as he might have termed it) an explosion that seemed likely to endanger more lives than poor Maria's. Somehow or other the argument landed in a "Turkish bath," which had evidently been overheated. We got out at last, but a sadness followed the inadvertent intimacy with which the incident began.

Mr. Hynes's only folio is his perspicacity. So perspicacious is he that he becomes obscure; for the jury, fascinated by his accuracy, order and deliberation of language, forget to follow the logical import of his arguments. Mr. Hynes has not spent seven months in epileptic investigation for nothing; he knows all about it; and when, despite this palpable fact, he places himself in the attitude of one thirstily craving information from alleged experts, the bewildered mind asks itself, "What will satiate such insatiability?" Again, the suffering plainly caused to Mr. Hynes by any suspicion of inconsistency between two or more statements of a witness, cannot but awaken general sympathy; and yet, what is a witness to reply when such a query as the following—or words to that effect—is put to him: "Assuming a case, consisting of the facts specified in the preceding facts, to be possible—assuming this, Doctor, and I presume you know, Doctor, what is meant by an 'assumption of the conclusion'?" In your opinion, X conscious or not conscious of the nature and quality of her acts during the period of unconsciousness?" Dr. Fitch and Dr. Newton after him showed a disposition to exercise that right of private judgment which was explicitly exhibited by the terms of the query; and thus it happened that when, at 4:30 o'clock, the defence and the prosecution both "rested," there was apparent need of repose on both sides, and a cloud was left hanging over the battlefield which even the Court seemed scarcely able to dissipate. Mr. Hynes might, perhaps, but he did not; and the jury accepted it as part of the day's work, and here it goes at that. As for the District Attorney, he slashed at it with that sharp sword of his, but a cloud cannot be cut to pieces. Maria beheld the conflict, but remained in the conviction that she would not be convicted; and an adjournment was taken till Thursday morning at 10 o'clock.

If the day has demonstrated nothing else, it has shown the abyssal difference between the medical and the legal genius. The doctor wishes to expand and to illustrate; the lawyer is resolved to restrict and to particularize. The latter charges the former with speakmaking; the former accuses the latter of quibbling. The one declines to be bound by conditions which his judgment and experience disallow; the other is stern in holding him to an artificial hypothesis. There seems to be no possibility of reconciling points of view so diverse, and, therefore, the layman is constrained to wonder why so strenuous and prolonged an attempt at reconciliation should be made.

Lawyer Thomas H. Bullock, who is not engaged on this case, but has been following it, and incidentally giving me the benefit of his legal acumen and experience thereupon, said yesterday that juries are liable to distrust experts because the latter uniformly testify in favor of the side which has engaged them. But it also occurs to one that the fact that the two parties of experts, both presumably infallible, inevitably contradict one another, must have a tendency not only to diminish their general usefulness as witnesses, but to support the cause of the defence. For a flat contradiction of one man in petent authority by another establishes a reasonable doubt, and the jury is bound, in capital case to give the defendant the benefit of whatever reasonable doubt exists. From the moment, then, that experts are summoned, it would seem that the physician's acquittal is assured. "I think she did not," said those of the day before. "We acquit," say the jury to-morrow. Why have experts at all?

Cross-questioning experts is like trying to tie up a fire with a ball of twine; the intended prisoner is always putting forth dangerous tongues of flame, so that the issue may turn out just the opposite of what the cross-examiner desired. On the other hand, if the witness be prevented from telling what he knows, or so questioned that what he does know be made to assume the appearance of what he denies, of what avail is his costly knowledge? He might better be a fool, for fools can be had cheap.

Some of the book-testimony was quoted from works in the French language. The expert on the stand was that if the passages were read in French, the jury (and perhaps others) did not understand them; if they were handed to the witness for his private perusal, the jury did not hear them, and if either the witness or the lawyer translated them aloud, the meaning of the author suffered at the point of extinction. Upon the whole, therefore, very little light was thrown upon the darkness from French sources.

There will be a summing up and the Judge's charge on Thursday, and the jury will consider their verdict, beginning at 9 o'clock. I should not be surprised if they disagreed; it will surprise me still less if they acquitted, but I should be almost as much surprised as that poor little black rabbit at the bar if they convicted.

#### LAST OF THE EXPERTS.

Dr. Robert Safford Newton's Evidence Against Maria Barberi Closes the Case.

The score in the Barberi case was evened up yesterday. Now it stands thus—four doctors on a side.

Doctors Haddock, Dana, Peterson, Jacoby. Doctors Hamilton, Hammond, Fitch, Newton.

She was an innocent—she was not in an epileptic seizure when she killed Cataldo, quite conscious when she killed Cataldo, quite conscious when she killed Cataldo.

If the defence had put on five doctors to say that Maria Barberi was an epileptic, instead of four, the prosecution would have watched the fifth great name with one equally envious, but as only four were called, four to say that what they said was not so, were all that were required, and the evidence closed yesterday with the sworn opinion of Robert Safford Newton—the last of the epileptic specialists—that the girl was of sound and discriminating mind when she cut her lover's throat, eighteen months ago.

Now the trial is all over but the shouting, and that will be done to-morrow by Mr. House for the girl, and Assistant District Attorney McIntyre for the people, with Judge Gildersleeve to close the debate with his charge to the jury.

The case will go to the jury at 5 or 6 o'clock to-morrow night.

It is a hard thing to prophesy what the jury will do, but most of those who have watched the trial, leaving out the lawyers of both sides, who are confident that the decision will be in their favor, believe that the twelve men in the box are not at all of the same mind and will not be able to agree.

If the result should be a mistrial the blame for it will rest on the experts. If twelve men who have made a life study of mental aberrations divide equally on the question of Maria Barberi's mental condition, it is likely that twelve laymen will be unanimous on the subject.

#### No Session To-day.

The trial does not proceed to-day, as court sessions adjourned because of District Attorney Follows's funeral.

The expert on the stand seems to consider that what he is there for is to offset the attorney for the opposite side. The attorney is not much better for his main purpose because the showing of the knowledge with which he has crammed, and the asking of questions with which he hopes to puzzle the expert. This resolves itself into a duel of wits with bare technical names for weapons. The woman on trial

other to "be fair" and not to "try to catch" each other. They fought their way down to this question of epilepsy.

"Suppose," said Mr. Hynes, "an act of violence is done by a person in a condition of epileptic epilepsy, does he remember anything about it?"

"No," said the Doctor, "I think in true epilepsy no one would remember."

#### Prolonged Examination.

Then came the question that provoked the "Turkish bath" reply and precipitated the wrangle. The examination was long drawn out, but it is safe to say there isn't a man on that jury who knows now whether Fitch got the better of Hynes or Hynes of Fitch.

Dr. Robert Safford Newton came next, with twenty years' experience in asylums and hospitals to qualify him for pronouncing on Maria Barberi's mental condition.

#### Uniform for Post Office Clerks.



After the preliminary display of the expert's knowledge by Mr. McIntyre, Dr. Newton said that Maria's selection of Cataldo among all the others in the saloon where she killed him was an indication that her discriminative faculty was awake, and that her taking a razor from a trunk and concealing it until she drew it across Cataldo's throat, etc., indicated the presence of will and consciousness at the time. This, of course, brought about another argument among the lawyers. The particular question that brought out this answer was disallowed, but Mr. McIntyre substituted "X" for Maria Barberi in the question, and got his answer that way.

During the cross-examination, Dr. Newton said that of late years there was a growing disbelief among alienists in heredity as an explanation of epilepsy; the percentage of heredity as a predisposing cause being variously given as from eleven to thirty-one. The general cause was an injury to the head at birth or afterward.

"What are the exciting causes of epilepsy?" asked Mr. Hynes.

In a majority of cases this is unknown. In some cases indication, excesses, lack of sleep, and the like.

"And excitation of the emotions?"

"Yes, sometimes. An excitement of the emotions may cause epilepsy and precipitate an attack."

Dr. Newton was the frankest of the experts. For instance, while he said his opinion was that the girl was not epileptic, he admitted that authorities differed widely on that point.

That was the end of the testimony. Mr. House makes his plea to the jury to-morrow morning at 10 o'clock, and at 1:30 Mr. McIntyre will sum up for the people. Each side is limited to two and a half hours of argument.

#### Four Alleged Pickpockets Caught.

Mrs. Lena Handinger, of No. 143 Norfolk street, was standing at Orchard and Livingston streets at 3:30 o'clock yesterday afternoon, when a young man snatched her pocketbook. Pileen McGowan caught the thief at Essex and Livingston streets. He gave the name of Lazarus Levy, of No. 20 Pike street. Three other young men who were with Levy at the time of the robbery and who are said to be members of an organized gang of pickpockets, were arrested later. They gave the names of Leo Davidson, of No. 182 Orchard street; James Young, No. 251 West Tenth street, and Robert Sanderson, of No. 124 Garden street, Hoboken. All three were held for examination in the Essex Market Court.

#### Mexican Official Admires the Tomb.

Senor Garcia Pimental, Governor of the Mexican State Prison, a resident of the City of Mexico, visited the Tomba Prison yesterday afternoon. Warden Van De Carr showed the Governor around, and he was much delighted with the management of the prison. He left with Deputy Warden O'Brien to his country for the Christmas of the inmates of the boys' prison.

#### Acquitted of Robbing a Church.

John Swanson, a Swede, who was charged with breaking into the Swedish Baptist Church, on Eldon street, near Sixth avenue, on September 8 last, was acquitted by a jury in the County Court, Brooklyn, yesterday.

#### FINERY FOR THE CLERKS.

"Window Men" in the Post Office to Be Arrayed in Blue and Gold Raid.

The vast army of window clerks of the branch post offices and sub-stations of the Post Office of New York, which includes money order clerks, registered letter clerks and all other clerks whose duties require them to face the public through a window, will soon be adorned with fine new uniforms, which they will provide for themselves at their own expense. The uniforms will consist of a single-breasted, square cornered coat and a cap. The coat will be made of dark blue cloth, very much like the cloth in a policeman's uniform. The



coat will be decorated with bright gold braid around the sleeves and line brass buttons. Like the coat the cap will be built of blue cloth and will be distinguished from a car driver's skull cap by a wreath worked in gold thread. The vest will be square and made of very thick, shiny leather. The wreath will encircle the letters, "P. O. N. Y.," which means, "Post Office of New York."

The clerks have not been compelled to adopt the new uniform. On the other hand they have explored the United States to permit them to encase themselves in finery in order to distinguish themselves from the janitors.

Eugene Sam has granted their plea and the uniforms are being constructed by a tailor in Baltimore. The clerks will owe him about eighteen dollars for each suit.

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As is the custom at these elections, a committee on nominations is elected some time prior to each election, and the tickets, the practice being to select two, must be filed with the secretary thirty days preceding the election. The committee, it appears, informed the union that it could not complete the work in time, and another week was granted. At the end of that time the report was not complete, but was ready a few days later, and in the regular order of business it was presented and read.

As a result, owing to the fact that the selections did not blend with the ideas of some of the members, there was some warm discussion, and several of the nominees refused to stand on the ticket, and resigned as additional disapproval. In order to get things working in unison a motion was made by Charles Lager to refer the report back to the nominating committee for further consideration. The motion was carried.

The independents, headed by Alexander Bremer, President of the Union, got together and put up a ticket headed by Mr. Bremer, who has been at the head of the union for a good many years, and the slate was fixed up on old lines. Apparently the campaign was well conducted, for it did not look out until some time later.

Mr. Lager, moving along his conciliatory lines, went to Mr. Walter Damrosch and asked him if he would accept the chair. Damrosch at first declined to consider it for a moment, but finally called his entire symphony orchestra together at Carnegie Hall and asked them what they thought of his proposal. "We give you credit of 'rank' by all means," "Do it, you will win." And the end was that Mr. Damrosch allowed his name to go at the head of the ticket.

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#### HUCKSTERS MAY PEDDLE.

#### Mayor Strong Declines to Veto the Resolutions Passed by the Aldermen.

Mayor Strong listened yesterday to the arguments of Ninth and Tenth avenue property owners in favor of permitting hucksters to sell food products on those avenues on Saturday evenings from 3 o'clock until 11 o'clock. Aldermen Muhlenberg and Robinson, who were responsible for two resolutions adopted by the Board of Aldermen last week, asked his Honor to permit the ordinances to become law without his signature. They declared the poor people were especially benefited by the vendors, and as the people who own the streets favor the hucksters they asked him to give them a chance.

Assistant Corporation Counsel Turner said that, as a matter of law, it had been held by Judge Deane, in the Supreme Court, that these street markets were unlawful, and that the Aldermen had no power to grant the privilege. But he had no doubt that they were most useful to the poor, and as the markets had been in existence since the time of the passage of the huckster ordinance, a few weeks ago, he supposed the Mayor could agree to let them continue up to January 1.

The Mayor said he would not veto the resolutions. So far as he was concerned, the hucksters might sell on Ninth and Tenth avenues until somebody objected.

#### AT WANAMAKER'S.

#### THE SCIENCE OF MODERN RETAILING.

It IS a science, and stores like ours are Academies—but academies